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# WISCONSIN LEGISLATIVE COUNCIL

## RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 02-050

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### 1. Statutory Authority

a. Under what authority does the department propose, in s. DWD 12.15 (2), that W-2 agencies administer a screening tool to screen for mental health and substance abuse issues in W-2 participants?

b. In s. DWD 17.05, under what authority does the department purport to delegate the authority to promulgate rules to the Department of Health and Family Services establishing standards of competency and training requirement for income maintenance workers? Although the provision cites s. 20.901, Stats., nowhere in that statutory section is a department given the authority to delegate authority to promulgate administrative rules. The statutory authority for this provision ought to be reviewed and, at a minimum, better explained.

#### 2. Form, Style and Placement in Administrative Code

a. In s. DWD 12.03 (intro.), the new, underscored material should follow the old, stricken material. [s. 1.06, Manual.]

b. Throughout s. DWD 12.09 (2) (c), parenthetical citations are used to refer to various provisions of federal law. The rule should avoid the use of parentheses in this manner. If certain material is important to the thought or concept expressed in the rule, the material should be set apart with commas, not parentheses. In the alternative, the material could be placed in an explanatory note to the rule.

c. The material in s. DWD 12.15 (3) (c) (intro.), is not really introductory material. Therefore, the introduction should be renumbered subd. 1. and the remaining subdivisions should be renumbered accordingly.

d. In s. DWD 17.04 (2) (intro.), the phrase “do all of the following” should be inserted immediately before the colon.

e. In s. DWD 17.07, it is noted that sub. (3) contains a title and subs. (1) and (2) do not. Titles should be used in a consistent manner. Thus, if any subsection of a particular rule section is titled, then all of the subsections in that section should be titled. Accordingly, either sub. (3) needs to have its title eliminated, or subs. (1) and (2) need their own titles.

f. In s. DWD 17.07 (2), where the date is supposed to appear, the following text should be inserted: “the effective date of this section .... [revisor inserts date].”

g. It would seem that SECTION 34 of the rule ought to renumber the note from s. DWD 17.07 to s. DWD 17.10 prior to amending it.

### **3. Conflict With or Duplication of Existing Rules**

In s. DWD 12.09 (2) (c) (intro.), the rule indicates that certain qualified aliens “may be” eligible for W-2. It is noted that current s. DWD 12.09 (2) (intro.) indicates that an individual is eligible for W-2 if he or she meets the nonfinancial eligibility requirements which follow. Does the phrase “may be” indicate that these aliens may not be eligible even if they meet all of the other nonfinancial eligibility requirements? If so, this would appear to be a conflict with sub. (2) (intro.). Perhaps the second sentence of s. DWD 12.09 (2) (c) (intro.) could be rewritten substantially as follows: “An individual is a qualified alien if he or she is any of the following:”.

### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. In s. DWD 12.09 (2) (c) 6., can the actual effective date of the federal law be stated here?

b. In s. DWD 12.09 (2) (c) 13. c., the references to “subdivisions a. or b.” should be changed to a reference to “subd. 13. a. or b.”

c. In s. DWD 12.09 (2) (e) 1., the end of that provision refers to a parent having “good cause for failing to cooperate.” It would be helpful to include a cross-reference to how one is determined to have “good cause.” Perhaps, a cross-reference to ch. DWD 15 would be appropriate.

d. In s. DWD 12.09 (2) (e) 2., the reference to “chapter DWD 15” should be to “ch. DWD 15.”

e. It is noted that s. DWD 12.03 (11) defines “domestic abuse” by means of a cross-reference to various provisions of the statutes. Section DWD 12.15 (3) (a) (intro.) seems

to further qualify or define “domestic abuse.” It would seem appropriate to include a phrase in the latter clarification of domestic abuse indicating that the definition included in s. DWD 12.15 (3) is in addition to, or in place of, the definition provided in s. DWD 12.03 (11).

f. Section DWD 12.15 (3) (b) 5. refers to “the department’s 12-hour training.” An appropriate cross-reference to the rule provision containing this training should be included. In addition, the phrase “to a W-2 applicant or participant” at the end of the sentence should be replaced by the phrase “under subds. 1., 2., or 4.”

### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In s. DWD 12.09 (2) (c) 10., should the reference to “child” be a reference to a “minor child”? If so, the rule should be clarified.

b. In s. DWD 12.09 (2) (c) 13. (intro.), the rule refers to an “alien who is lawfully residing.” Should the rule refer to “an alien who is lawfully residing in this state”? If so, the rule should be clarified. This comment also applies to subd. 14.

c. In s. DWD 12.09 (2) (e) 2., the provision uses the terms “Wisconsin Works group” and “W-2 group.” Since the current rule only defines the term “Wisconsin Works group,” it would seem appropriate to just use that term. In the alternative, the current rule, in s. DWD 12.03 (40) could be revised to also include the term “W-2 group” in the definition of “Wisconsin Works group.” In any event, the rule should use consistent terminology within the same provision of the rule. Thus, s. DWD 12.09 (2) (e) 2. should be revised.

d. In s. DWD 12.09 (2) (n), the phrase “job opportunities and basic skills program under s. 49.193, 1997 Stats.,” can simply be replaced by the term “JOBS” or, if desired, the phrase “JOBS program,” since “JOBS” is a defined term in the rule.

e. Section DWD 12.15 (2) uses the term “screening tool.” The term is vague in the context of the rule. A definition or description of the term should be provided to clarify the rule.

f. In s. DWD 12.15 (3) (c) 3. e., should “Domestic abuse” replace “Domestic violence” for consistency with the remainder of the rule?

g. In s. DWD 12.15 (3) (b), the rule uses the term “screening instrument.” Is this different than a “screening tool” as used in s. DWD 12.15 (2)? If so, the term should be clarified. If it is the same term, consistent terminology should be used throughout the rule.

h. In s. DWD 12.15 (3) (b) 3., may the individual also voluntarily and confidentially disclose that his or her child has been the victim of domestic abuse? If so, the rule should be clarified.

i. In s. DWD 12.16 (4) (c), the period at the end of the sentence being amended should not be underscored.

j. In s. DWD 17.02 (12), the term “American Indian nation” should be replaced by the phrase “American Indian tribe or band” to be consistent with other provisions of the rule.

k. In s. DWD 17.02 (14m), the term “Resource specialist” in the second sentence should be placed in quotation marks.

l. In s. DWD 17.03 (2), the phrase “shall not” should be replaced by the phrase “may not.”

m. In the treatment clause of SECTION 22 of the rule, the word “are” should be inserted immediately before the word “amended.” In addition, the term “DWD 17.03” should be inserted before the “(4)” in the text of that SECTION.

n. In s. DWD 17.05, is it the intent that the rules promulgated by the Department of Health and Family Services supersede the provisions of newly created s. DWD 17.06, relating to training of W-2 workers? It would appear that the Department of Workforce Development will still be responsible for the training of W-2 workers. The rule should be clarified.

o. In s. DWD 17.06 (2) (b), the first sentence should be rewritten so that it begins substantially as follows: “No FEP may make independent . . . .” In addition, the second sentence should be rewritten in the affirmative, substantially as follows: “To successfully complete the initial W-2 training, an FEP shall attend all class hours and shall participate in all instructional activities.” The article “an” should also be used before “FEP” in par. (c).

p. In s. DWD 17.06 (4) (intro.), the term “DWD” should be deleted in the first sentence. In addition, the word “the” should be inserted before the word “training” at the end of the second sentence. In addition, the phrase “do all of the following” should be inserted immediately before the colon.

q. In s. DWD 17.10 (3), should the phrase “or W-2” be inserted immediately after the first occurrence of the term “IM”?

r. In s. DWD 17.07 (1) (d) (intro.), the phrase “all of the following” should be inserted immediately prior to the colon.

s. In s. DWD 17.07 (3) (intro.), the term “DWD” should be deleted. In addition, the word “the” should be inserted before the word “training” at the end of the second sentence. Finally, the phrase “include all of the following” should be inserted immediately before the colon.